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COMMENTS

The Usufructuary's Obligation to Preserve the Property

Perhaps in the eyes of many, the institution of usufruct is a tottering relic of the Roman law past which serves only to fetter full enjoyment of property and to clutter the law of Louisiana with uncertainty. Nevertheless, the institution of usufruct is very much a part of Louisiana law. By operation of law, the surviving spouse enjoys usufruct over the decedent's half of the community where he has died intestate;¹ parents are entitled to usufruct of the minor's estate in certain instances;² moreover, recent interpretations of the Louisiana Trust Estates Act³ serve

1. LA. CIVIL CODE art. 916 (1870).

2. *Id.* art. 223. See Note, 22 LOUISIANA LAW REVIEW 889 (1962).

3. LA. R.S. 9:1791 (1950).

to warn the cautious attorney that income interests placed in trust must be in the form of usufruct lest the transfer be voidable as a prohibited substitution.⁴

It is basic civilian theory that full enjoyment of property involves three principal rights: *usus*, the right to utilize the thing for one's own purposes; *fructus*, the right to gather and use the fruits of the thing; and *abusus*, the right to alienate — to sell or mortgage. The usufructuary enjoys the first two of these rights. The Civil Code defines usufruct as the right of enjoying a thing the ownership of which is vested in another.⁵ The usufructuary may draw from the thing "its profits, its utility and its advantages." If the thing can be enjoyed without changing its substance, the usufruct is "perfect." If, however, the thing cannot be used or enjoyed except by "consuming" it, the usufruct is "imperfect."⁶ The obligation of the usufructuary having imperfect usufruct of a thing is simply to restore its estimated value at the termination of usufruct.⁷ On the other hand, where usufruct is perfect, the usufructuary must return the thing itself, in its original condition except for normal wear and tear and deterioration which have not been caused by his negligence.⁸ The *abusus*, or right of alienation, remains in the naked owner of the property, who becomes the full owner at the termination of the usufruct.

As a general principle, the Louisiana usufructuary is bound to care for the property as would a "prudent administrator." In addition, he is required to use the property only as the former owner used it without altering its "destination." He is also bound to share, with the naked owner, certain expenses connected with the property. Though there are some guidelines in the Civil Code and a handful of cases in point, one will search in vain for a clear and detailed statement of these obligations. It is the purpose of this Comment to ascertain insofar as possible, what these obligations are.

Prudent Administration

The institution of usufruct originated during the Roman

4. Succession of Meadors, 135 So.2d 679 (La. 1961); Note, 22 LOUISIANA LAW REVIEW 889 (1962).

5. LA. CIVIL CODE art. 533 (1870). For a full discussion of "fruits" and "profits," see Yiannopoulos, *Introduction to the Law of Things: Louisiana and Comparative Law*, 22 LOUISIANA LAW REVIEW 756 (1962).

6. LA. CIVIL CODE art. 534 (1870).

7. *Id.* art. 549.

8. *Id.* art. 550.

Republic, though not until the Empire period did it become a general legal institution. Since usufruct was not a form of ownership, it could not be created by the usual modes of conveyance — not by *traditio*, since it was not physical but an incorporeal right, nor by *mancipatio* since it was not a *res mancipi*.⁹ Whether the usufructuary's obligation to preserve the thing subject to usufruct was created by *stipulatio*, at the insistence of the praetor, or existed at civil law and was merely enforced by him, it is clear that the standard of care to which the usufructuary was held was that of a prudent *paterfamilias*, the praetor requiring security for adherence to that standard.¹⁰ In essence, the standard of care required was that of "one who was the sole owner of the family goods."¹¹ This standard was carried into the French,¹² German¹³ and Louisiana¹⁴ Civil Codes. As nearly as can be determined, the obligation of the prudent administrator or *paterfamilias*, is analogous to that of the compensated bailee or "reasonable man" at common law.¹⁵ Though no Louisiana court has attempted to define or apply the concept of prudent administration in this context, perhaps the familiar standard of the "reasonable man" would be applied should the occasion arise.

The Obligation Not to Alter the "Destination" of the Property

The Louisiana Civil Code provides that during the usufruct, the property must not be "altered in form, distribution or destination" or improved without the consent of the naked owner.¹⁶ This provision has its roots in the Roman law. The Justinian legislation provided that the usufructuary might enjoy the sub-

9. BUCKLAND, A TEXT-BOOK OF ROMAN LAW 127 *et seq.* (1932).

10. INSTITUTES 2.1.38; DIGEST 7.9.1.pr.

11. *Digest* 7.9.1.3; 1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2814 (1959).

12. FRENCH CIVIL CODE art. 601.

13. GERMAN CIVIL CODE art. 1036.

14. LA. CIVIL CODE art. 567 (1870).

15. Fuzier-Hermann, in his notes to Article 1137 of the French Civil Code, says that to determine whether a person has acted in accordance with the standard of a *bon pere de famille*, one has to decide whether his conduct has been such "as one would have expected from a sensible man managing his own affairs having ordinary knowledge and taking ordinary care." This seems to be the same general standard laid down in *Heaven v. Pender*, L.R. 11 Q.B.D. 503 (1883). See also 16 LAURENT, PRINCIPES DE DROIT CIVIL FRANCAIS §§ 214—216 (1876). The distinction alleged to exist in Anglo-American law between "negligence" and "gross negligence" does not exist at French law according to Laurent. There is only one standard recognized by the Code, the *pere de famille*. It is only in exceptional cases that another standard is recognized, as in the case of the gratuitous depositary (FRENCH CIVIL CODE arts. 1927, 1928); a gratuitous agent (*id.* arts 1922, 1374).

16. LA. CIVIL CODE art. 568 (1870).

ject of the usufruct only in the manner his grantor had been in the habit of enjoying it.¹⁷ He might sell produce only if the former owner had been in the habit of doing so.¹⁸ This principle was applied so strictly that the usufructuary might not even plaster a rough wall.¹⁹ If he did, he not only committed a wrong, but this act terminated the usufruct, whether the alteration had been made by him or by another responsible to him.²⁰

Planiol suggests that the non-alteration provisions of the French Civil Code are susceptible to a broader construction than indicated by their Roman law origin.²¹ The French Code requires generally that "the substance of the thing be preserved."²² This, says Planiol, does not restrict the usufructuary to use the property only in the manner of the prior owner, but requires merely that he "does not alter what is essential to the thing." Presumably, he would urge that the usufructuary should be permitted to make such improvements and alterations on a farm, a machine, or a going business as are necessary to keep it up to date, so long as the economic purpose of the thing is not substantially changed. He notes, however, that the French jurisprudence has adhered to the narrow Roman view of non-alteration.

The Louisiana Civil Code contains precisely the same non-alteration provisions as the French,²³ but there is no interpretative jurisprudence indicating whether the courts will be inclined to take a restricted or a liberal view towards alterations by the usufructuary. The Louisiana Code is more specific than its civilian cousins in specifying what is meant by "altering the destination of the thing." The Louisiana usufructuary may not finish

17. RICCOBONO, *STUDI BRUGI* 173 *et seq.*

18. *Ibid.*

19. DIGEST 71.44.

20. DIGEST 7.4.5.2., 31; PAUL. sent. 3.6.28. Though no Louisiana court has ordered the termination of usufruct because the usufructuary has altered the use of the property, there is a basis for such a holding in Article 621 of the Civil Code, which provides: "The usufruct may cease by the abuse which the usufructuary makes in his enjoyment, either in committing waste on the estate, or in suffering it to go to decay, for want of repairs, or in abusing in any other manner, the things subject to the usufruct."

21. 2 PLANIOL, *CIVIL LAW TREATISE* (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2818 (1959).

22. FRENCH CIVIL CODE art. 578. The *Digest* language from which this provision was taken used the Latin phrase "*salva rerum substantia*." Planiol contends that if the French meant to restrict the usufructuary to the use made by the former owner, then this phrase was mistranslated as it now appears in Article 578. 2 PLANIOL, *CIVIL LAW TREATISE* (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2818 (1959).

23. LA. CIVIL CODE art. 533 (1870) requires that the thing be used "without altering the substance of the thing." *Id.* art. 568 specifies that the thing shall not be used in such a way as to alter its "form, distribution or destination."

buildings commenced by the owner, nor may he erect new structures unless they are necessary for working the land or growing crops. He may not rebuild buildings which have been destroyed by accident or deterioration, may not demolish or destroy anything that has been built by the owner, nor may he take away the materials.²⁴ He may not open new mines or quarries on the land but may enjoy the product of those which were opened at the time he entered into the usufruct.²⁵ These provisions would tend to indicate that the redactors of the Civil Code were thinking of non-alteration in the narrow Roman law sense. Planiol notes that in France, this narrow view has resulted in disallowing the usufructuary from converting a hotel into a store, or a residence into a warehouse, from changing the mode of cultivating land (*i.e.*, he may not change vineyards into plowed grounds), and cutting trees for timber, although he may take copeswood trees.²⁶

In Anglo-American law, the legal life tenant, whose duties with respect to non-alteration of use are similar to those of a usufructuary, may not change the premises in such a way that remaindermen or reversioners would have "reasonable ground for objection thereto."²⁷ The Restatement of Property indicates that it is objectionable to alter, erect, or remove a building, to change the configuration of the surface, or to devote the use of the land to a purpose substantially different.²⁸ For instance, it is objectionable to remodel a residence for use as a store, to construct a new building to be used as a garage, to construct a golf course upon farm land, and to clear timber for cultivation.²⁹

The common law courts have sought to limit objections of the owners of future interests by requiring that they be "reasonable" and that the life tenant be shown to have used the property contrary to "good husbandry."³⁰ Apparently, if the legal life tenant can justify his changes and improvements on the basis of acknowledged good business or farming practices, so long as

24. *Id.* art. 569.

25. *Id.* art. 552. This article has been applied by analogy to oil and gas wells, *Gueno v. Medlenka*, 238 La. 1081, 117 So.2d 817 (1960), discussed by Professor Hardy in *The Work of the Louisiana Supreme Court for the 1960-1961 Term—Mineral Rights*, 22 LOUISIANA LAW REVIEW 329 (1961), noted 20 LOUISIANA LAW REVIEW 773 (1960).

26. 2 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2819 (1959).

27. RESTATEMENT, PROPERTY § 140 (1936).

28. *Id.* comment (a).

29. *Ibid.*

30. *Ibid.*

he has not altered the general economic purpose of the land, he is not held to have intruded upon the interests of the reversioner or remainderman.

Only the German Civil Code would seem to allow the usufructuary the flexibility to use the thing as would a prudent owner. The usufructuary is tied to use it in accordance with a predetermined economic purpose;³¹ and though he may not transform the thing or alter it materially, he may make changes "so far as the *economic purpose* of the land is not altered."³² This idea of flexibility seems to resemble quite closely the liberal interpretations of the French non-alteration provisions espoused by Planiol.³³ Throughout the section on usufruct in the German Civil Code runs the notion that the usufructuary should be permitted to keep up with the times, as is consistent with "orderly management."

In summary, though a prudent owner might change the use of his property in response to economic progress, a literal reading of the Louisiana Civil Code would indicate that the Louisiana usufructuary must continue in the traces of his former owner. Conceivably the strict view of non-alteration would prohibit such practices as crop rotation and contour plowing, the raising of cattle on land no longer capable of supporting agriculture, the conversion of the family residence into a boarding house, etc.

Sharing of Expenses with the Naked Owner

The Louisiana Civil Code provides that the owner shall be responsible for "extraordinary" repairs, defined as "those of the principal walls and vaults, and the replacing of beams and roofs *in toto*, and the reconstruction of a levee entirely destroyed or carried away. *All others are ordinary repairs*, for which the usufructuary is responsible."³⁴ Applied literally, this would mean that should the engine in a sugar mill require a major overhaul, should the floor of a dwelling be ruined by termites, or should a fishing camp be ruined by smoke damage from a fire, the usufructuary thereof would be burdened with the cost of

31. GERMAN CIVIL CODE art. 1036.

32. *Id.* art. 1037.

33. Similar flexibility is found in the use permitted to a legal life tenant in Anglo-American law. See note 27 *supra* and accompanying text.

34. LA. CIVIL CODE art. 572 (1870). Though this article seems to enumerate all repairs to be classified as "extraordinary," Article 577, which classifies repairs necessitated by partial damage due to accident or deterioration as "ordinary" is clearly a mistranslation from the French antecedent and should read "extraordinary" repairs. See WEST'S LSA—CIVIL CODE art. 571 (1952).

the "ordinary" repairs. However, considering that these articles were drawn before the Industrial Revolution with a view primarily towards usufructs upon agricultural property, it is suggested that the redactors may have sought to divide responsibility for repairs in roughly the same manner as accountant would allocate expenditures between capital and current expenses. If this is correct, then the application of the repairs provision, as written, would not be in keeping with the principles upon which it was drafted. Perhaps it would be more in keeping with their intent to divide expenses between usufructuary and naked owner, as Planiol suggests, according to whether one having full ownership would charge off the cost of repairs as current expense or would add the cost to his capital account.³⁵

Where the thing has been totally destroyed by accident or has entirely deteriorated,³⁶ neither the naked owner nor usufructuary is obliged to rebuild it. If there is only partial damage from those causes, rebuilding is classified as an ordinary repair.³⁷ During the existence of the usufruct, the naked owner may compel the usufructuary to make those repairs he is bound to make, under penalty of damages.³⁸ If the owner makes repairs in the interim between the establishment of the usufruct and the time the usufructuary actually enters into possession, the owner may withhold possession until reimbursed for the price of those repairs.³⁹ However, the usufructuary may release himself from these obligations by renouncing the usufruct, even if the naked owner has instituted suit to compel him to repair, unless the necessity for repairs has arisen from his own negligence.⁴⁰ It has

35. 2 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2821 (1959). Article 606 of the French Civil Code provides that "the usufructuary is only bound to do such repairs as are required for the upkeep of the property (*reparations d'entretien*). Structural repairs (*grosses réparations*) fall upon the owner, unless they have been rendered necessary by the fact that since the usufruct began, the ordinary repairs of upkeep have been neglected; in which case the usufructuary is bound to effect structural repairs." (Wright's translation.) In the French Code, "structural repairs" are defined in the same manner the Louisiana Code defines "extraordinary" repairs. The French courts have not limited the concept of "structural repairs" to "repairs to principal walls . . . to vaults, replacing the old beams and putting on an entirely new roof, radical repairs of dykes, to the retaining walls of a terrace or canal, repairs to walls forming enclosures" as listed in Article 606, but have sought to delineate generically between structural and upkeep expenses. Thus it has been held that the "remaking of an important part of a machine" is a heavy or structural repair to be borne by the naked owner. Paris Jan. 5, 1905, D.1905.2.23; Paris June 7, 1926, Gazette du Palais, July 8.

36. LA. CIVIL CODE art. 377 (1870).

37. *Ibid.* See note 34 *supra*.

38. *Id.* art. 573.

39. *Id.* art. 625.

40. *Id.* art. 575; Succession of Dougart, 30 La. Ann. 268 (1878).

been held that the usufructuary may not renounce his usufruct over only the portion of the property needing repair, but must relinquish the whole right.⁴¹

On the other hand, the usufructuary has no right of action to compel the owner to make extraordinary repairs. If the owner wishes to rebuild, however, the usufructuary must permit him to do so. If the owner does not, the usufructuary may advance the necessary funds, subject to reimbursement,⁴² as these are not such constructions as he is bound to abandon to the owner upon termination of the usufruct.⁴³ According to Planiol, if the French usufructuary is required to borrow money at interest to pay for rebuilding, the naked owner is required only to reimburse him for the principal amount, the usufructuary being obligated to pay the interest.⁴⁴ It is arguable that the same result should follow in Louisiana by analogy to Article 579 of the Civil Code, which requires reimbursement for extraordinary charges, other than repairs, paid by the usufructuary only for capital expended. Until the usufructuary is reimbursed for the extraordinary repairs he has financed, he may remain in possession.⁴⁵

Taxes and charges. The Civil Code provides that the Louisiana usufructuary is liable for all annual charges, taxes, ground rents, and regular charges imposed upon the thing subject to usufruct.⁴⁶ If the charge is "extraordinary or temporary he is nevertheless bound to pay but may require reimbursement for capital expended."⁴⁷

In France, ordinary charges are state taxes, *ad valorem* taxes, municipal taxes, and all others charged upon real estate.⁴⁸

41. *Judice v. Provost*, 18 La. Ann. 601 (1866).

42. LA. CIVIL CODE art. 576 (1870).

43. Ordinarily, the usufructuary has no claim for reimbursement for improvements he has made upon the thing during the usufruct. *Id.* art. 594.

44. 2 PLANIOI, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2822 (1959). Though not within the scope of the present inquiry, it is interesting to speculate as to how laborers' and mechanics' liens would attach to the property in the course of repairs. In theory these liens would attach to the thing itself, and thus only naked ownership would be affected. Should the property be sold to pay costs of repairs, would the usufruct still be in force?

45. LA. CIVIL CODE art. 625 (1870); *LeGoaster v. LaFon Asylum*, 155 La. 159, 99 So. 22 (1924) (the usufructuary may recover expenses incurred in making extraordinary repairs only when he himself has made the advances; but if the expenditures were by a third person, the usufructuary is not entitled to retain possession of the thing).

46. LA. CIVIL CODE art. 578 (1870).

47. *Id.* art. 579.

48. 2 PLANIOI, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2820 (1959).

In Germany, it would appear, however, that the usufructuary would not be liable for direct taxes upon the property since he is not bound for tax burdens laid on the "principal value" of the thing.⁴⁹ This would seem to indicate no *ad valorem* tax liability.

In Louisiana, it is clear that the usufructuary is liable for *ad valorem* property taxes.⁵⁰ It has also been held that he is liable for paving taxes,⁵¹ though it is arguable that these are extraordinary or temporary charges in that they "are of a nature to augment the value of the property."⁵² A recent case was held that the usufructuary is not liable for income taxes resulting from gains realized upon liquidated corporate stock subject to usufruct, on the ground that capital gains taxation is not a direct tax on the property, but upon the proceeds of a transaction involving property.⁵³ An early case has held that where property ownership is a condition of entitlement to vote, the usufructuary is not qualified, *qua* usufructuary.⁵⁴

Conclusions

From the foregoing, it should be amply clear that without specification in a testament or trust instrument, the obligations of the usufructuary to preserve the thing are most uncertain and may bind him undesirably. It is suggested that the situation might be considerably improved by adopting a clear distinction between ordinary and extraordinary repairs and by permitting more flexibility in the way the usufructuary may use the property.

As to ordinary and extraordinary repairs, it is suggested that the line could well be drawn, in principle, between repairs which a full owner would consider capital in nature and those which he would ordinarily consider to be expenses of upkeep.⁵⁵ This test could be applied to help answer some of the unanswered questions, such as responsibility for insuring the property.⁵⁶

49. GERMAN CIVIL CODE art. 1047.

50. *Coleman v. Poydras Asylum*, 17 La. Ann. 325 (1865); *Succession of Stewart*, 100 So.2d 228 (La. App. 2d Cir. 1958).

51. *City v. Wire*, 20 La. Ann. 500 (1868).

52. LA. CIVIL CODE art. 579 (1870). The usufructuary is not required to pay such extraordinary charges.

53. *Succession of Stewart*, 100 So.2d 228 (La. App. 2d Cir. 1958).

54. *Endom v. Monrie*, 112 La. 779, 36 So. 681 (1904). As to notice of tax deficiency due to the usufructuary and naked owner before the property is sold for taxes see *Spears v. Spears*, 173 La. 294, 136 So. 614 (1931); *Spikes v. O'Neal*, 193 So. 487 (La. App. 1st Cir. 1940).

55. See 2 *PLANIOL, CIVIL LAW TREATISE* (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2821 (1959).

56. *Id.* no. 2817. The French usufructuary is not required to insure the

Ordinarily, an insurable risk of loss is thought itself to be "extraordinary" in that the insured does not feel that he can bear to pay for loss out of funds available for ordinary upkeep; hence the garden variety of policies insuring against fire and casualty losses. The Civil Code provides that the naked owner is obligated to rebuild, or at least reimburse, the usufructuary for rebuilding where the thing is partially destroyed by accident, classifying this sort of repair as extraordinary.⁵⁷ Since fire and casualty insurance covering property subject to usufruct would cover losses which the naked owner is bound to make good, he should properly bear the cost of the premiums. On the other hand, the usufructuary is liable for extraordinary repairs where occasioned by his fault or neglect.⁵⁸ It would seem to follow that the cost of a policy covering losses due to the usufructuary's negligence should be borne by him.

As to the non-alteration of use provisions, it might be worthwhile to consider the German approach, which permits flexibility to the usufructuary so long as he adheres to the "previous economic purpose."⁵⁹ This would seem to require the usufructuary to use the land, say for agricultural purposes, but would permit him to use land formerly under cultivation for grazing land, if consistent with orderly administration. However, even the German position is perhaps too limited in the context of a modern economy. Perhaps the Code should not require the usufructuary to continue to use land, in accordance with its *previous* economical purpose but should permit him to use it in accordance with a *profitable* one. Thus if the usufructuary could markedly increase the revenue from farmland by converting it to a golf

property, though he recommends that the usufructuary should be required to continue the premiums. See 6 LAURENT. PRINCIPES DE DROIT CIVIL FRANCAIS no 530 (1876). *But cf.* Bescancon, April 1, 1863 D.63. which analogized the usufructuary's situation as prudent administrator to that of a tutor and held him responsible to the naked owner for not having paid premiums where a loss had occurred.

The German Civil Code provides explicitly for the payment of insurance premiums. Article 1045 requires the usufructuary to insure against fire and casualty "if orderly management so requires." The policy must be drawn so that the owner has the right to the proceeds. If the property is already insured, the usufructuary must continue the premiums. Both the usufructuary and the naked owner may require that the proceeds be used in restoring the property or procuring a substitute "as required by orderly management." GERMAN CIVIL CODE art. 1046.

57. LA. CIVIL CODE art. 577 (1870).

58. *Id.* art. 571.

59. GERMAN CIVIL CODE art. 1036.

course, he should be permitted to do so, provided he did not substantially reduce its value upon termination of the usufruct.

Gerald LeVan

Contribution Among Joint Tortfeasors

Where contribution is permitted among joint tortfeasors bound in solido, each may recover any amount he has paid in excess of his proportionate share.¹ This Comment will examine the Louisiana law pertaining to the right of contribution among joint tortfeasors, with particular attention to Article 2103 of the Louisiana Civil Code as recently amended.²

The State of the Law Prior to 1960

The common law denies the right of contribution.³ The rationale of this rule seems to be that one should not be able to allege his own turpitude as the basis of a right to recover from another.⁴ However, the courts in some jurisdictions have deviated from this, where the basis of joint liability is simple negligence, and deny contribution only where the liability was incurred through the commission of an intentional tort or gross negligence.⁵ Furthermore, a significant number of states have adopted statutes permitting contribution where one of two or more defendants cast jointly and severally has paid more than his proportionate share of the judgment.⁶

1. PROSSER, TORTS 246, § 46(f) (1951); Hodges, *Contribution and Indemnity Among Tortfeasors*, 26 TEX. L. REV. 150 (1947). Contribution among joint tortfeasors should be distinguished from the doctrine of comparative negligence which is applied in most civil law jurisdictions and in admiralty law. The doctrine of comparative negligence is best exemplified where the court or jury apportions the loss between two tortfeasors in proportion to their relative fault. Malone, *Comparative Negligence—Louisiana's Forgotten Heritage*, 6 LOUISIANA LAW REVIEW 125 (1945); Philbrick, *Loss Apportionment in Negligence Cases*, 99 U. PA. L. REV. 742 (1951); Prosser, *Comparative Negligence*, 51 MICH. L. REV. 465 (1953).

2. LA. CIVIL CODE art. 2103 (1870), as amended, LA. ACTS 1960, No. 30, § 1.

3. 1 HARPER & JAMES, TORTS § 10.2 (1956). This rule was first announced in the case of *Merryweather v. Nixan*, 101 Eng. Rep. 1337 (1799).

4. See *Reath, Merryweather v. Nixan*, 12 HARV. L. REV. 176 (1898).

5. *Advanced Refrigeration v. United Motors Service*, 69 Ga. App. 783, 26 S.E.2d 789 (1943); *Constantive v. Scheidel*, 249 Iowa 953, 90 N.W.2d 10 (1958); *East Coast Freight Lines v. Mayor and City Council of Baltimore*, 190 Md. 256, 58 A.2d 290 (1948). Kentucky and Virginia have limited contribution by adopting identical statutes providing: "Contribution among wrongdoers may be enforced where the wrong is a mere act of negligence and involves no moral turpitude." KY. REV. STAT. § 412.030 (1953); VA. CODE ANN. § 8-627 (1950).

6. *Commercial Casualty Ins. Co. v. Leonard*, 210 Ark. 575, 196 S.W.2d 919 (1946); *Brown Hotel Co. v. Pittsburg Fuel Co.*, 311 Ky. 396, 224 S.W.2d 165